Submission
of

ONTARIO FEDERATION OF LABOUR

to the

GOVERNMENT OF ONTARIO

●

THE MATTER OF INJUNCTIONS IN LABOUR DISPUTES

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Toronto

March, 1966

Submission to
The Ontario Government
on the matter of Injunctions

Honourable Sirs:

Since our annual submission was written a number of things have happened that have focused attention on the serious problems resulting from the indiscriminate use of injunctions in labour disputes. Although the question of injunctions was dealt with briefly in our submission, we have done further research into the matter and are more convinced than ever that changes must be made in the handling of this aspect of labour relations.

We firmly believe that the use of injunctions in labour disputes has to be abolished if we are to have industrial peace.

The process of collective bargaining is seriously undermined, and the employer is less likely to bargain in good faith, if he knows that when a strike is called he can easily get an injunction against picketing and thereby weaken or break the strike. This is particularly the case with smaller establishments. The use of the injunction puts the balance of power into the hands of the employer.

Injunctions are not a new phenomenon in labour relations on this continent. In the Report of the Industrial Commission created by an Act of United States Congress in 1898, the subject of injunctions is dealt with. The following quotation expresses the conclusions reached by the Commission:

> "It is undoubtedly desirable that this extraordinary process of injunctions should be employed with greater conservatism than has been the case during the past decade. However severely the acts of strikers against which injunctions are usually directed, may be condemned, this is, in many cases scarcely a proper method of checking them. Some injunction orders have gone too far in the scope of acts prohibited, and have been too indiscriminately applied to great bodies of people. It seems desirable that statutes should be enacted, defining with greater precision the acts of workingmen which are permissible, or which are civilly or criminally unlawful,

in order that a clearer indication of the limits of the injunctive process may be given. It would seem more in accordance with legal procedure to limit the application of injunction orders than to provide for jury trial of violation thereof." [1]

The abolition of the injunction in labour disputes was a plank in the Democratic platform of William Jennings Bryan.

Since then some progress has been made in the USA on this matter. The Federal Courts have been deprived of jurisdiction to issue restraining orders or injunctions in cases "involving or growing out of any labour dispute to prohibit any person or persons participating or interested in such disputes . . . from doing, whether singly or in concert . . ." any enumerated list of acts (Norris-LaGuardia Act, Section 4). The most important of these acts are strikes, picketing and secondary boycotts. The jurisdiction to grant restraining orders and injunctions in such disputes is conferred upon the National Labour Relations Board.

More recently, the Select Committee on Labour Relations, reporting to the Ontario Legislature on July 10, 1958, made these recommendations:

"The Committee therefore recommends that there should be no ex parte injunctions granted in matters affecting the Labour Relations Act, except in cases of emergency, and suggests that—

(a) the rules of practice in the Supreme Court, and such other rules as might apply, be amended to require notice to both parties, or

(b) that prior to an injunction being granted, application should be made to the Labour Relations Board, and permission of that Board obtained;

(c) that the notice required to be given in accordance with this recommendation shall be deemed to have been given if personal service is effected, or if it is left at the Union Office, or at the last known address of some person known to be a member of the union executive." [2]

Since the present Minister of Labour was a member of the Select Committee that made these recommendations, we are hope-

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[1] Ely, R. T., **Evolution of Industrial Society** (Macmillan) 1903, p. 355.

[2] Report of the Select Committee on Labour Relations of the Ontario Government pp. 39-40.

ful that subsequent events have strengthened his conviction on this matter.

There is a restlessness among the workers of Ontario that is deep rooted and cannot be dismissed as a passing phase. We believe that much of this restlessness and frustration is brought about by the growing use of injunctions. Coupled with this there is dissatisfaction with the refusal of management to abandon its worn out and antiquated concept of management's rights. It is discontent with the badly outdated labour legislation in this province.

Two recent examples of labour unrest that have received considerable publicity were the protest demonstrations in connection with the labour disputes at Oshawa and Peterborough.

On January 27 the Canadian Newspaper Limited (Oshawa Times) was struck by 34 workers to back up their demands for decent wages and provision of job security in the introduction of automation. This was a lawful and peaceful strike.

On the day following the calling of the strike a writ for injunction was issued and an injunction was granted January 31. The affidavits filed contained allegations of interference but none of violence, all based on hearsay.

The injunction was obtained. It applied only to the striking Newspaper Guild members. It limited the Guild to ten pickets, and they complied with the order. The other demonstrators who subsequently appeared on the scene were from other unions. They were simply walking up and down on the public sidewalk and were not on the employer's property. They did not molest or intimidate anyone. The absence of any violence on the picket line deprived the police of a compelling reason to intervene.

On December 14, 1965 the employees of Tilco Plastics called a legal strike in support of their bargaining position. On December 17, a blanket injunction was granted prohibiting picketing.

A second injunction was issued December 20, limiting pickets to 12. Following this a number of unionists from the Peterborough area demonstrated within sight of the struck plant against the use of the injunctions in labour disputes.

The civic authorities in Peterborough confirmed that the demonstrations were peaceful. The Attorney General also agreed

that it was a peaceful demonstration. Despite this 25 peaceful demonstrators were charged with contempt of court.

The Federation is convinced that the demonstrations were a reasonable protest against the unfair use of court injunctions which interfere with the legal collective bargaining process.

The injunction against the Textile Workers Union restraining the number of pickets to 12, was adhered to. At no time after the injunction was granted were there more than 12 strikers picketing.

On February 24 the Honourable A. Wishart stated in the Legislature and we quote; "I had hoped that by previous statements to the House I might have counselled the leaders and members of responsible labour groups to pursue their desire for a change in our laws by the proper means that have been effectively utilized by our society throughout the history of its development." [3]

May we remind you that, throughout the years we have pursued the "proper" means to try to convince the government to change this law and its misuse in labour disputes without success. The Federation and many of its affiliated unions have made countless representations on the subject to this government and its select committees and commissions.

Since 1957 the Federation has protested in briefs to this government and its agencies against the use of injunctions in labour disputes on ten separate occasions (appendix "A"). This does not include the many times individual unions have raised this question in their submissions to the government and its various bodies.

Obviously our representations have fallen on deaf ears. Is it any wonder, then, that workers have taken it unto themselves to protest this law and its misuse in the only effective manner available to them? That is, by peaceful assembly. With all due respect, it does seem to us that there is some inconsistency between the statements and the actions of the Attorney General. On February 24, 1966, he stated in the House: ". . . there has been no violence in the assembly at Peterborough, I have been in constant touch with the Crown Attorney, the Sheriff, and the Chief of Police at Peterborough, through the officials of my department, and I have the assurance of all these responsible persons that the

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[3] **Hansard,** Fourth Session, Twenty-Seventh Legislature of Ontario p. 836.

picketing and actions have been orderly. There is no law preventing a lawful assembly, and it would be a shocking commentary on our community if we even contemplated that such assemblies should be restricted."

We are critical of the use of injunctions in labour disputes because they are often obtained *ex parte,* under circumstances in which notice could and should be given. They are too often granted on biased affidavits, based not on personal knowledge but on information and beliefs, on hearsay evidence that is contrary to general law procedures. The language of the affidavits is such as to cover an area broader than the circumstances warrant. They make *pro forma* allegations of irreparable harm to the company and disregard completely the irreparable harm they can cause to the party enjoined by the injunction. They, in effect, strengthen the economic position of the company at the expense of the workers, and this usually without a hearing on the facts, or lack of facts in the affidavit.

Today, before workers go on a legal strike, they must comply with the various procedures of the Ontario Labour Relations Act. Although we believe that the procedures are time consuming and too lengthy, and are suggesting they be changed we have patiently adhered to the rules. Having given up the right to strike at their convenience, it would seem that the workers should be protected once a legal strike is called. An employer should not be allowed to replace these workers with other workers who had no part in the original decision to strike.

Too often the courts and judges have been used by employers, under a pretence of protection against "intended" violence, to issue *ex parte* injunctions automatically at a crucial moment of a strike. The damage has been done by the time the hearing takes place. If it comes to a hearing, the representative of the workers is forced to agree to a limited picket rather than wait through the lengthy procedure that would ensue if he were to oppose the injunction in the courts. In such a case, the original interim injunction would be extended to the time of disposition of the case. He loses both ways.

In most industrial countries jurisprudence has developed under which labour disputes have been treated as a special kind of dispute, and machinery has been designed to this end to deal with them. This was so because it was found by experience that courts were not equipped for this special field. Despite this, one

feature of common-law practice — the injunction — has not been removed from *labour disputes.*

With the granting of an injunction against the workers picketing, the right to strike is virtually wiped out. At the same time the procedures and regulations revert to common-law practice, which is not equipped to weigh the delicate nuances and the social and economic position of the "protagonists".

The situation vis-a-vis employer and employee ceases to be on an equal footing. The employees are placed at a tremendous disadvantage materially and psychologically. The court, by granting an injunction, has succeeded in making it appear that the workers are in the wrong, which has the effect of destroying their morale. In an *ex parte* injunction, this goes even further, because the judge takes the undisputed word of the employer and, in effect, sides with him even before hearing the case of the employees.

Recently, granting of injunctions against picketing has been the rule rather than the exception. We have compiled a list (Appendix B) of injunctions issued in labour disputes in the last number of years and were able to find only two cases where an injunction was refused. Even this partial list of injunctions granted is quite impressive and, we think, establishes our point that injunctions have now become part of the pattern of strike-breaking devices used by employers.

Generally, the judges have failed to take into consideration the relative social and economic position of the two parties to the dispute in a strike situation. Granted, a judge should be above social prejudice, but, with all due respect, we submit that experience has shown us that judges have been all too willing to grant injunctions indiscriminately and often on the flimsiest of evidence. We can only draw the conclusion that their social position inclines them to favour the companies.

Oliver Wendell Holmes suggested in 1897 in *The Path of the Law* that the judiciary could improve their record in this regard. He said; "I think that judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage."

We could go a step further than the eminent Justice Holmes in recommending that the use of injunctions in labour disputes

be abolished completely, whether they are issued by judges, courts or tribunals.

Injunctions issued by judges give rise to a situation in which a judge is called upon, in effect, to decide victory or defeat on issues of tremendous social import, not through the regular painstaking examination of evidence and cross-examination of witnesses, but upon affidavits which, if legally processed to a final stage (in most cases they are not) would be found to be faulty and unreliable in many cases. Injunctions in labour disputes are a perversion of the democratic process. Injunctions issued to break strikes or to prevent organization could not but invite disrespect for judges and for the law. In our opinion this is an unhealthy state of affairs in a democratic society. To permit such a state of affairs to continue can only increase tensions and add fuel to the fires of industrial strife.

The law regarding picketing is outmoded and inaccurate. It was devised under ancient labour-management conditions and its interpretation by present law makers is inarticulate.

In no other activity does the court go to such lengths to enjoin a person or persons from committing an intended crime as it does in the case of a strike.

A person who buys a gun, or one who gets into a car, and, in either case, later kills someone with these lethal weapons, is not issued with an injunction against their use. Provision is made that, if he does break the law of the land he is summarily brought to court and dealt with.

Yet, almost invariably when a strike occurs, workers have an injunction granted against them, enjoining them to refrain from various acts which the court assumes the workers will commit.

It is unrealistic and unfair to have matters of such importance decided on the basis of affidavits, which at best can only set out a partial story. Considerable time can be consumed under the present system in arguing the validity of the injunction, while some sort of injunction continues. Very seldom does this come to court for final disposition since usually the strike is settled, but settled with the handicap of the injunction against the workers in the dispute.

We would suggest that incidents of property damage, violence or hurt to people be dealt with by criminal or civil law

through normal legal proceedings. If it is established that wrong is done and the guilt of the person or persons responsible is proven, such persons will be compelled to suffer the penalty, be it criminal or civil.

Very few people would try to contend that pickets on the picket line be allowed to beat up people or to use force to prevent them from crossing the picket line.

Quite clearly, the ordinary laws governing such things are just as applicable to labour disputes as they are to any other situation. There are the police, part of whose job is to see that the ordinary law is maintained. If someone is harmed, he can lay charges in the courts and have the offender prosecuted. If he suffers injury, he can, in addition, sue the person who injured him. If he proves the case he can collect damages.

These are the rights that are open to everybody; we fail to see that the employer is harmed by the restriction of his rights to ordinary police protection and the kind of procedures just outlined.

The basic purpose of an injunction in any dispute is to keep things as they are until the legality of the charges are substantiated and decided upon by the courts. Bitter experience has shown us that this is not the case in labour disputes. It does not keep things as they are. The injunction serves the purpose of tipping the hand in favour of the employer, and we are convinced this is the only purpose it serves in labour disputes.

Section 366 of the Criminal Code provides that it is an offence to watch and beset. The section goes on to say that, in a labour dispute, attending at, in or near a residence or place of employment to obtain or communicate information is not watching and besetting, within the meaning of the section, and thus is not an offence.

Most of our courts have taken this to mean that picketing must therefore be restricted to the obtaining or communicating of information, and that anything beyond this is a criminal offence.

In regard to this A. W. R. Carrothers has said; ". . . a purposive element dominates the conveying of virtually any information by anyone. Pickets are advocates. Their object is to persuade. To say picketing 'is wrongful if it is carried on other than for the

purposes of obtaining or communicating information' (Canada Dairies Case) is close to saying it is wrongful if it is effective." [4]

There is also a mistaken idea among the judiciary that two or three pickets at an entrance to a plant is sufficient to communicate information that a strike is in effect.

The courts are assuming, incorrectly, that picket lines exist merely to disseminate information. Actually, they are symbols of a union's solidarity and a vital method of obtaining the members' support, maintaining morale and in continuing his determination to stick it out until his grievances are adjusted. Numbers are therefore important. To reduce the picket line to a token few by court order (and all that action in itself implies) is very often to take the heart out of the whole strike. Small wonder that employers are so anxious to get an injunction just as soon as a strike is called.

Mr. Justice Rand has expressed the view that the right to picket means the right of persuasion.[5] In our opinion this means the right to use as many pickets as necessary to meet this end. This number, we suggest, should be unlimited, provided that there is no resort to violence.

The definition of lawful picketing contained in Section 366(2) of the Criminal Code is, in our opinion, too narrow and out-of-date. The law should recognize, in explicit terms, the right of strikers to persuade others to support their action, in addition to their right to disseminate information, without it being interpreted as watching and besetting.

We believe that labour relations have developed to the extent in our society, that workers who have acquired equity in welfare schemes, pension plans, seniority rights and other benefits attached to a particular place of work, and who are on strike, should be protected so that their jobs are not taken by strike breakers.

Our laws give the worker a right to strike when all his efforts to achieve agreement have failed, and the necessary steps prescribed by law, have been exhausted. A worker goes on strike only as a last resort.

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[4] Carrothers, A.W.R. **The Labour Injunction in British Columbia**, p. 67 CCH 1956.

[5] Per Rand., J., **Aristocratic Restaurants Ltd. v. Williams et al** SCR 1951, p. 762, CLLR Transfer Binder 1949-54, para. 15015.

Workers must have the right to inform the public that they are on strike, and to be in no way restricted from seeking support for their cause. If the legislation and the courts restrict that right then the community is arrayed on the side of the employer and a basic and elementary civil right is curtailed.

As is evidenced by the recent developments the patience of organized labour in regard to this matter is becoming exhausted. We have repeatedly protested against this judicial device in labour disputes but to no avail. It is regrettable that unions have found it necessary to engage in civil disobedience but this seems to be the only effective recourse against an unjust law.

There are those who will argue that just a few demonstrators would be enough to voice our opposition to injunctions. By the same logic it could be said that the civil rights workers could have written letters to the editors and posted two or three pickets in front of restaurants whose owners were depriving some citizens of their rights, and who were using legal yet unjust states' laws for their immoral purposes. If they had followed such advice the civil rights movement in the U.S.A. would have made very little, if any, headway.

In summary, our position is that ALL injunctions be removed from labour disputes and that a very serious consideration be given by your government to outlawing the hiring of outside strike-breakers by employers during a legal strike.

All of which is respectfully submitted by:

Ontario Federation of Labour

DAVID B. ARCHER,
President.

DOUGLAS F. HAMILTON,
Secretary-Treasurer

March, 1966

Appendix "A"—EXCERPTS FROM OFL SUBMISSIONS TO THE ONTARIO GOVERNMENT AND ITS COMMITTEES AND COMMISSIONS ON THE MATTER OF INJUNCTIONS.

1958—OFL Annual Submission.

"Once again we must register our protest against the indiscriminate use of injunctions in labour disputes."

1958—Supplement to the Submission of the OFL to the Select Committee on Labour Relations.

". . . the inevitable injunction was handed down quickly."

1960—Submission of the OFL to the Ontario government.

"In our experience, employers have habitually used ex parte proceedings in the hope of obtaining a temporary and unjustified restriction on legitimate picketing activity. We urge your government to amend the Judicature Act."

1961—Submission of the OFL to the Royal Commission on Labour-Management Relations in the Construction Industry.

". . . we urge that the use of ex parte proceedings be barred entirely where the remedy requested applies to labour disputes. In addition, we recommend that any injunction curtailing picketing in a lawful strike or lockout should also restrain the employer from attempting to operate his place of business so long as picketing is limited or prohibited."

1961—Submission of the OFL to the government of Ontario.

". . . we suggest at this time that this part of the Judicature Act be reconsidered with a view to exempting labour disputes from the injunction process."

1963—OFL Legislative Proposals to the Ontario government.

". . . in common-law, ex parte injunctions may serve some useful purpose. In labour disputes, however, ex parte injunctions can only have one effect, to shift the economic balance in favour of the employer. We therefore urge that your government move to have all ex parte proceedings removed from labour relations disputes."

1964—OFL Legislative Proposals to the Ontario government.

"We once again ask for an amendment to the Judicature Act that would prohibit the use of injunctions in labour disputes until they have been spoken to and the judge is in full possession of the facts."

1965—OFL Legislative Proposals to the Ontario government.

". . . ex parte interim injunctions are contrary to a fundamental principle of our system of justice. It weakens the strike and helps the company. We suggest that the Judicature Act be amended."

1965—Submission of the OFL to the Inquiry into Civil Rights.

"We respectfully propose that all ex parte interim injunctions in labour disputes be abolished, and that the Judicature Act be amended to eliminate them."

1966—Submission of the OFL to the Honourable H. L. Rowntree, Minister of Labour.

"Injunctions can be obtained by the single expedient of an affidavit alleging certain incidents, without evidence supplied. Allegations contained in such flimsy affidavits seldom, if ever, come to trial."

1966—Submission of the OFL to the Ontario government.

"Every time a judge issues a restraining order against a union in a strike situation, he is assisting the cause of management."

Appendix "B"—A PARTIAL LIST OF INJUNCTIONS GRANTED AGAINST UNIONS IN ONTARIO 1955-65.

Midland Superior Express Ltd. v. General Truck Drivers & Helpers Union, Local 31 et al	Sept. 14, 1956
Lever Bros. Ltd. v. Gordon Douglas Briggs et al	July 19, 1957
Thomas Fuller Construction Co. v. Paul Rochon et al	Aug. 16, 1957
Canadian Overseas Shipping Ltd. v. Kake	May 12, 1958
Wilson Court Apts. Ltd. v. Genovese	May 12, 1958
Robin Hood Flour Mills Ltd. v. Packinghouse Workers	July 1, 1958
Har-A-Mac Construction Co. Ltd. v. Harkness	July 7, 1958
Canadian Allis-Chalmers Ltd. v. U.A.W.	Feb. 1959
Kaufman Rubber Co. v. Rubber Workers Union	June 30, 1960
Falconbridge Nickel Mines Ltd. v. J. E. Keuhl et al	Sept. 23, 1960
National Rubber Co. v. Rubber Workers Union	Oct. 5, 1960
Century Engineering Co. Ltd. v. Creto et al	Nov. 14, 1960
Proctor Packers v. Packinghouse Workers Union	June 1961
Dominion Bridge Co. Ltd. v. Carbno et al	Aug. 2, 1961
Whyte Packing Co. v. Packinghouse Workers Union	Jan. 19, 1962
Scarborough Public Utilities v. Local 636, I.B.E.W.	Feb. 6, 1962
Hersees of Woodstock v. Peter Goldstein et al	Oct. 23, 1962
Nipissing Hotel Ltd. et al v. Bartenders Union	Nov. 8, 1962
Hersees of Woodstock Ltd. v. Goldstein et al	Feb. 27, 1963
Edland Construction (1960) Ltd. v. Childs et al	June 5, 1963
Hanover Kitchens (Canada) Ltd. v. International Woodworkers	May 1963

Barber Greene Canada Ltd. v. I.A.M.	Nov.	1963
Foundation Co. of Canada v. McGloin et al	Nov.	30, 1963
Acton Excavating & Contracting Ltd. v. Caruso et al (Local 675 Teamsters)	Apr.	10, 1964
United Farms v. Local 419, Teamsters	June	1964
Holland River v. Local 419, Teamsters	June	1964
Bradford Farms v. Local 419, Teamsters	June	1964
Calumet Hecla (Wolverine) v. U.A.W.	Aug.	1964
Lanark Manufacturing v. U.E.		1964
Amalgamated Electric v. U.E.		1964
General Printers Ltd. v. Thomson et al	Aug.	31, 1964
Aluminum Co. of Canada Ltd. v. I.A.M.	Oct.	5, 1964
Robertson Yates Corp. Ltd. v. Fitzgerald et al	Apr.	6, 1965
Heather Hill Appliances (Yonge) Ltd. v. Toronto Typographical Union 91	June	21, 1965
American Motors (Canada) Ltd. v. U.A.W.	Aug.	23, 1965
Jones Transport Ltd. (Brantford) v. Teamsters	Oct.	13, 1965
Bannister Construction v. Five Named Persons	Oct.	20, 1965
British-American Oil Co. v. O.C.A.W.	Nov.	24, 1965
Tilco Plastics v. Textile Workers	Dec.	17, 1965
Union Gas (Hamilton) v. O.C.A.W.	Jan.	7, 1966
Canadian Newspapers Ltd. (Oshawa Times) v. Toronto Newspaper Guild	Jan.	31, 1966
Victoria Transport v. Teamsters Union	Feb.	1966
Agnew-Surpass Shoes v. Local 879, Teamsters	Mar.	1966